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10/537,467

12/08/2005

Alexander Mark Heming

70193

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85981

7590

06/29/2010

Syngenta Corp Protection, Inc.  
410 Swing Road  
Greensboro, NC 27409

EXAMINER

KAUCHER, MARK S

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

06/29/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### **ATTACHMENT TO THE ADVISORY**

1. Applicants' amendment filed on 06/15/10 has been entered. However entry of the amendment does not overcome all the rejections of record for reasons elucidated below.

#### ***Response to Amendment***

2. The amendment to the specification filed 06/15/10 is noted, which amends the specification to correct typos/misspellings. In light of the amendment, the objection of the specification is withdrawn.

3. It is also noted that claims 1 and 33 have been canceled.

#### ***Response to Arguments***

4. Applicant's arguments filed 06/08/10 have been fully considered but they are not persuasive.

5. Applicant's arguments filed 06/08/10 with respect to the ODP rejection over US 7,199,185 have been fully considered and are persuasive. The ODP rejection of the instant claims over US patent 7,199,185 has been withdrawn. Specifically, it is noted that none of the copending claims are directed towards a suspension product.

6. Applicant's arguments filed 06/08/10 have been fully considered but they are not persuasive.

- *Applicant argues that the Finality of the Final Office Action mailed 03/15/10 was premature “given that a clear issue has not been developed between Examiner Kaucher and Applicants with regard to the 102(e) rejection based on Heming. Additionally, applicant argues that example 10 discloses a suspoemulsion, which is a mixture of an emulsion with a suspension.*

7. In response, the examiner disagrees. The examiner points (see paragraphs 19-25 of the Office action mailed 10/22/09) to the examples, *i.a.*, which clearly anticipate the instant claims. Note that the arguments in points 1-4 on pages 15-16 don't specifically and distinctly point to the errors in the prior art rejections.

More specifically, Example 10 discloses Heming discloses “a suspension concentrate of copper-mesotrione, that had been dispersed with the same polymeric surfactant used for the emulsion”. Note that mesotrione is a fungicide (agrochemical solid, note the melting point of mesotrione is around 175 °C), the polymeric surfactant fits that of the instant claims. More specifically, see col. 33, lines 15-25. Moreover, example 10 states that the (1) polymeric surfactant to solid is 1 to 100. See example 10. Also note that the ratio is less than 1 part stabilizer per 5 parts solid in ever example.

It is noted example 10 contains additionally ingredients (e.g. emulsified solids), however nonetheless, it is clear, as noted by applicant, that example 10 does contain a suspension and reads on the instant claims. Note that the instant claims use an open language transitional phraseology *viz* comprising. Thus, there is nothing in the instant claims to exclude additional ingredients.

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- *Applicant argues that Heming does not disclose (i) an insoluble solid or an agrochemical solid suspended in (ii) a liquid phase via (iii) a stabilizing reaction product as recited in the instant claims (forth paragraph of the response).*

8. In response, the examiner disagrees. Example 10 discloses Heming discloses “a suspension concentrate of copper-mesotrione, that had been dispersed with the same polymeric surfactant used for the emulsion”. Note that mesotrione is a fungicide (agrochemical solid, note the melting point of mesotrione is around 175 °C), the polymeric surfactant fits that of the instant claims. More specifically, see col. 33, lines 15-25.

- *Applicant additionally argues that Heming does not disclose the claimed ratio (forth paragraph of the response).*

9. In response, the examiner disagrees. Specifically, example 10 states that the (1) polymeric surfactant (note that applicant argues that the ratio is the reaction product to the solid, or reactant, which appears to be incorrect) to solid is 1 to 100. See example 10. Also note that the ratio is less than 1 part stabilizer per 5 parts solid in ever example.

- *Applicant additionally argues metolachlor is a liquid at room temperature not a solid in example 7 (first paragraph of page 17 of the response).*

10. In response, the examiner notes that metolachlor is a liquid, not a solid. Thus, it is noted that not all of the examples of the prior art read on the instant claims, however

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nonetheless the argument is moot since some of the examples read on the instant claims. Specifically, see example 10, which contains a suspended agrochemical solid.

- *Applicant argues that Fryd does not teach applicant's claimed ratio and that the examples yield ratios above the claimed ratio, thus Fryd teaches away from the claimed ratio (last two paragraphs on page 18 of the response).*

In response, it is noted that disclosed examples do not constitute a teaching away from a broader disclosure. Patents are relevant as prior art for all they contain. Thus, rejections over prior art's broad disclosure instead of a preferred embodiment are proper. See MPEP § 2123 and references cited therein for more information. In the instant case, the solid and polymeric dispersant have been established as result effective variables. See 3:28-35 and 3:36-45 of Fryd.

- *Applicant continues to argue that although Fryd teaches the ratio is not critical to the invention, this does not suggest to utilize the claimed ratio (second paragraph on page 19 of the response). A logical implication of the text of Fryd would imply that when less solid material is used, less polymeric dispersant will be needed. (page 19 to page 20 of the response).*

11. In response, the examiner disagrees. The citations of Fryd (3:28-45) clearly states that the amount of solid (particle) depends on the end use. For example, agrochemicals (agricultural compounds) would be different than pigments. See 3:28-34. Note that the polymeric dispersant (stabilizer) function is to disperse the insoluble particles. See

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3:36-45. Also note that the particle size depends upon the application and the wide range of useful particles sizes of 0.005 to 100 microns. See 3:7-20. Thus, one would optimize the amount of solid, amount of stabilizer and the ratio of stabilizer to solid to control the size, amount of particles and size of the particles. Note that the ratio would control the size of the particle. See 3:7-45.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK S. KAUCHER whose telephone number is (571) 270-7340. The examiner can normally be reached on Monday to Thursday, 8:00 AM to 7:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasudevan S. Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/MARK S KAUCHER/  
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